

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

DWAYNE B., a minor by his Next)
Friend, John Stempfle, et al, for) Detroit, Michigan
themselves and others similarly)
situated,)
Plaintiff,) January 24, 2023
vs.) 11:07 a.m.
GRETCHEN WHITMER, in her official)
capacity as governor of the state) Case No. 06-3548
of Michigan, et al.,)
Defendant.)

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE NANCY G. EDMUNDS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: SAMANTHA BARTOSZ
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Proceedings reported by stenotype reporter.
Transcript produced by Computer-Aided Transcription.

P R O C E E D I N G S

11:05:43AM (At 11:07 a.m., proceedings began.)

11:07:41AM **THE CLERK:** 06-13548, D.B. versus Granholm.

11:07:47AM Counsel, please state their name for the record.

11:07:51AM **MS. BARTOSZ:** Good morning, Your Honor, Samantha

11:07:52AM Bartosz from Children's Rights on behalf of the plaintiff.

11:07:59AM **MS. DRYSDALE-CROWN:** Good morning, Your Honor. This

11:08:00AM is Assistant Attorney General Cassandra Drysdale-Crown. I

11:08:05AM apologize for not being able to turn on my video. I'm having a

11:08:09AM little glitch here on my end.

11:08:10AM I am here on the behalf of State defendants. I have

11:08:13AM with me Director Elizabeth Hertel, as well as Director

11:08:19AM Demetrius Starling and Director Kelly Sesti on behalf of State

11:08:24AM defendants.

11:08:25AM **THE COURT:** And I see that Director Hertel is here as

11:08:29AM well.

11:08:40AM (Off-the-record discussion.)

11:10:10AM **THE COURT:** Okay. And I see Director Starling is

11:10:12AM here as well. I don't know if you were introduced just a

11:10:15AM moment ago or not.

11:10:18AM **MS. DRYSDALE-CROWN:** Sure, Your Honor. Thank you.

11:10:21AM If you would like us to start with State defendants, we'd be

11:10:24AM more than honored to start.

11:10:26AM Good morning. As I --

11:10:27AM **THE COURT:** Well, sorry. I would like to hear from

11:10:30AM 1 the minors before I hear from the parties.

11:10:33AM 2 **MS. DRYSDALE-CROWN:** Thank you.

11:10:36AM 3 **THE COURT:** Mr. Ryan and Ms. Crummy.

11:10:42AM 4 **MR. RYAN:** Good morning, Your Honor. This is Kevin

11:10:43AM 5 Ryan. Today we're submitting the 18th report to the Court in

11:10:45AM 6 the matter of Dwayne B. versus Whitmer covering period 21,

11:10:50AM 7 which is July 1st, 2021 to December 31, 2021 under the Modified

11:10:57AM 8 Implementation Sustainability and Exit Plan called the MISEP.

11:11:03AM 9 Michigan DHHS met or exceeded the required

11:11:05AM 10 performance standards in 13 areas monitored for compliance in

11:11:09AM 11 MISEP period 21. In all of these 13 areas, the State also

11:11:14AM 12 exceeded or came very close to the performance standard in

11:11:17AM 13 previous periods as well.

11:11:20AM 14 Among areas where the agencies continue to achieve

11:11:23AM 15 high levels of performance are caseloads. DHHS exceeded the

11:11:28AM 16 caseload standards established for Child Protective Services

11:11:31AM 17 workers, purchase of service workers, and licensing workers.

11:11:36AM 18 Also worker-child visits, ensuring that children

11:11:39AM 19 receive at least one visit per month in their placement

11:11:41AM 20 location, promptly completing investigations of child abuse and

11:11:46AM 21 neglect and ensuring children's health records are up to date

11:11:51AM 22 and include children's -- are included in children's digital

11:11:54AM 23 case records.

11:11:55AM 24 The MISEP allows that once DHHS has satisfied the

11:11:59AM 25 designated performance standard for certain commitments at the

11:12:03AM 1 end of one reporting period, as validated by the monitors, the
11:12:06AM 2 commitment is eligible to be moved to the Section 5 of the
11:12:10AM 3 MISEP, just called "To Be Maintained", and three commitments
11:12:14AM 4 meet this criteria at the conclusion of MISEP period 21:
11:12:18AM 5 Worker-Child Visits, one visit per month in the placement
11:12:22AM 6 location, which is Section 6.21.b; Child Case File, Medical and
11:12:29AM 7 Psychological, one, which is Section 6.30; and Child Case File,
11:12:35AM 8 Medical and Psychological, two, which is Section 6.30.

11:12:41AM 9 The MISEP also allows that for certain commitments,
11:12:44AM 10 once DHHS has maintained performance at the designated
11:12:49AM 11 performance standard for two consecutive reporting periods, the
11:12:52AM 12 commitment will be moved to Section 4 of the MISEP, known as
11:12:55AM 13 Structures and Policies. One commitment met these criteria at
11:12:59AM 14 the conclusion of MISEP 21, Support for Transitioning to
11:13:03AM 15 Adulthood which is 6.36.a.

11:13:17AM 16 **THE COURT:** Ms. Crummy, I think you're muted.

11:13:18AM 17 **MS. CRUMMY:** Sorry about that. Good morning, Your
11:13:18AM 18 Honor.

11:13:21AM 19 In addition to the 13 areas where Michigan DHHS met
11:13:24AM 20 or exceeded the required performance standards in MISEP period
11:13:28AM 21 21, the State was within 10 percent of the performance standard
11:13:32AM 22 in 17 areas. Of these 17 areas, the State was within 5 percent
11:13:37AM 23 of the performance standard in six areas, with performance at
11:13:42AM 24 or above 90 percent. Examples include, 98.8 percent of
11:13:47AM 25 children in period 1 were placed in a licensed foster home, a

11:13:51AM 1 licensed facility, pursuant to a court order or in an
11:13:55AM 2 unlicensed relative home pursuant to commitment 6.5.

11:14:00AM 3 93.6 percent had at least one visit per month with
11:14:05AM 4 their case worker that included a private meeting pursuant to
11:14:08AM 5 commitment 6.21.b, and 91.8 percent of foster care workers had
11:14:15AM 6 caseloads of no more than 15 children pursuant to commitment
11:14:22AM 7 6.14.

11:14:22AM 8 In total, Your Honor, DHHS exceeded, met or came
11:14:25AM 9 close to meeting the performance standards in 30 of 55 areas
11:14:30AM 10 monitored for period 21.

11:14:33AM 11 In the MISEP -- the MISEP includes other commitments,
11:14:35AM 12 however, that have not yet taken hold. Maltreatment in care
11:14:40AM 13 investigations. The monitoring team reviewed a sample of
11:14:43AM 14 unsubstantiated investigations into abuse and neglect of
11:14:48AM 15 children in the state's care from federal fiscal year 2021, the
11:14:53AM 16 period which is October 1st of 2020 to September 30th of '21,
11:14:58AM 17 and the team determined that 34, or 37 percent, of 92 randomly
11:15:05AM 18 selected investigations were deficient. This includes nine
11:15:09AM 19 investigations the monitoring team determined met the criteria
11:15:13AM 20 for substantiation of child abuse and neglect and 25
11:15:17AM 21 investigations where there was insufficient information
11:15:20AM 22 gathered to render a finding.

11:15:23AM 23 DHHS reviewed the monitoring team's findings and
11:15:27AM 24 agreed that 29, or 31.5 percent, of the 92 investigations were
11:15:32AM 25 deficient. Summaries of these cases will be filed under seal

11:15:37AM 1 with the Court.

11:15:38AM 2 In addition, for the past year, the monitoring team
11:15:41AM 3 has been reviewing a more recent sample of completed abuse and
11:15:45AM 4 neglect investigations from October 1st of 2021 through
11:15:50AM 5 September 30th, 2022, and we have been meeting with DHHS
11:15:55AM 6 leadership regularly to discuss many of these investigations.
11:15:59AM 7 We expect to file with the Court in March our findings from
11:16:03AM 8 this more recent review of cases.

11:16:06AM 9 In addition to Child Safety and Commitment, 6.1, the
11:16:09AM 10 State did not meet or nearly meet the performance standards for
11:16:13AM 11 24 other commitments, including 6.8 and 6.9, the length of time
11:16:19AM 12 children spend in emergency and temporary facilities and the
11:16:23AM 13 number of times they did so; ensuring periodic and ongoing
11:16:28AM 14 medical, dental and mental health examinations and screening
11:16:32AM 15 pursuant to commitment 6.29; securing informed consent for the
11:16:38AM 16 administration of psychotropic medication to children in
11:16:42AM 17 commitment 6.33; and the documentation and oversight of
11:16:46AM 18 psychotropic medication to children in commitment 6.34.

11:16:51AM 19 And the State did not achieve its commitment on the
11:16:53AM 20 last remaining permanency commitment in the MISEP, permanency
11:16:58AM 21 indicator one, commitment 6.3, which measures the percent of
11:17:02AM 22 children who went to foster care within a 12-month period who
11:17:06AM 23 were discharged to permanency within 12 months of their entry
11:17:11AM 24 date.

11:17:12AM 25 Based on the dates file -- files provided by DHHS,

11:17:17AM 1 the monitoring team calculated that of the 5,483 children who
11:17:21AM 2 entered foster care between October 1st, 2018 and
11:17:26AM 3 September 30th, 2019, 1,501 children, or 27.4 percent, exited
11:17:35AM 4 to permanency within 12 months of their entry. DHHS did not
11:17:40AM 5 meet the MISEP standard of 40.5 percent for this commitment.
11:17:45AM 6 To meet the performance standard agreed upon by the parties,
11:17:50AM 7 DHHS should have achieved permanency for an additional 720
11:17:55AM 8 children.

11:17:55AM 9 In sum, Your Honor, the State has made significant
11:17:58AM 10 progress in 30 of 55 areas monitored in period 21, and
11:18:03AM 11 significant work remains in 25 areas. There is no question
11:18:07AM 12 that progress has been made in this case and with continued
11:18:11AM 13 leadership, investment and focus, we hope the State will
11:18:15AM 14 continue to do so for children in the State's care.

11:18:18AM 15 Thank you, Your Honor.

11:18:21AM 16 **THE COURT:** Thank you Ms. Crummy, Mr. Ryan. As
11:18:24AM 17 usual, your oversight and your report are extremely valuable to
11:18:31AM 18 me, and I appreciate all that you've been doing to move this
11:18:37AM 19 whole program forward.

11:18:41AM 20 And I would be happy to hear now from the State and
11:18:45AM 21 then from the plaintiffs.

11:18:53AM 22 **MS. DRYSDALE-CROWN:** Thank you, Your Honor.

11:18:54AM 23 On the behalf of the State, I would like to introduce
11:18:58AM 24 Michigan Department of Health and Human Services Director
11:19:01AM 25 Elizabeth Hertel. She will speak first to this Court, and then

11:19:05AM 1 second we'll have Children's Services Agency Executive
11:19:09AM 2 Demetrius Starling, and Children's Services Bureau Director
11:19:14AM 3 Kelly Sesti.

11:19:16AM 4 So today first you'll hear from Director Hertel. She
11:19:19AM 5 will provide a general overview of the Department's continued
11:19:23AM 6 progress on the MISEP. And then you will hear from Kelly Sesti
11:19:29AM 7 who will provide a PowerPoint presentation that will focus on
11:19:34AM 8 not only the progress made in the CAPs but also MISEP 21. And
11:19:41AM 9 then you will hear from Director Starling who will provide an
11:19:47AM 10 overview of the efforts the Department is making in its
11:19:50AM 11 continued efforts to improve children's safety who are placed
11:19:53AM 12 in the care of Michigan.

11:19:56AM 13 Director Hertel, I turn it over to you.

11:20:00AM 14 **DIRECTOR HERTEL:** Thank you, and thank you, Your
11:20:03AM 15 Honor, for this opportunity to continue to update the Court
11:20:05AM 16 with our ongoing efforts and strategies to ensure that children
11:20:09AM 17 placed in our care are safe and are achieving positive
11:20:13AM 18 outcomes. I would also like to thank Children's Rights and the
11:20:17AM 19 Michigan monitoring team for their continued efforts to provide
11:20:19AM 20 technical assistance and to discuss items of interest for both
11:20:24AM 21 parties.

11:20:26AM 22 After the Correction Action Plans were approved by
11:20:29AM 23 this Court in April of 2022, we continue to have open lines of
11:20:33AM 24 communication with the court monitors as we effectively
11:20:37AM 25 implement some of the strategies identified in the Corrective

11:20:40AM 1 Action Plans. As of December 31st, 2022, the Department has
11:20:45AM 2 fully implemented 70 of the 72 Corrective Action Plan items,
11:20:49AM 3 while the final two are currently progressing toward full
11:20:54AM 4 implementation.

11:20:55AM 5 The MISEP reporting period currently before this
11:20:58AM 6 Court contains data collected from July 1st, 2021 through
11:21:02AM 7 December 31st, 2021. Therefore, this data does not reflect our
11:21:06AM 8 current performance resulting from the CAP strategies benefits,
11:21:10AM 9 which are helping us improve on several fronts as we refine our
11:21:15AM 10 commitment to ensuring the safety of children placed in our
11:21:18AM 11 care.

11:21:19AM 12 One area that is especially noteworthy is the
11:21:21AM 13 Department's continued efforts to implement strategies to
11:21:25AM 14 increase placement array. These efforts include Public Act 166
11:21:29AM 15 of 2022, which is our State's appropriations bill, which
11:21:33AM 16 included \$15 million of one-time funding for child caring
11:21:37AM 17 institutions. Additionally, a \$10 million dollar legislative
11:21:42AM 18 transfer request made by the Department was approved for child
11:21:46AM 19 caring institutions.

11:21:47AM 20 The combined 25 million was issued as a lump sum
11:21:50AM 21 payment to those child caring institutions committed to
11:21:53AM 22 providing services in fiscal year '23. Fiscal year '23 child
11:21:59AM 23 caring institutions rate increases are an average of 5 percent
11:22:02AM 24 for abuse and neglect programs, 12 percent for juvenile justice
11:22:06AM 25 programs and this is inclusive of a \$2 per hour direct wage

11:22:10AM 1 increase.

11:22:12AM 2 Fiscal year '23 increased rates for foster parents,
11:22:16AM 3 independent living providers, relatives and adoptive parents
11:22:20AM 4 and guardians by 20 percent, which we implemented on
11:22:23AM 5 October 1st of 2022, and I continue to personally review every
11:22:28AM 6 emergency shelter placement.

11:22:31AM 7 In our continuing efforts to monitor contract
11:22:33AM 8 oversight and improve the safety of children in our care, I
11:22:36AM 9 have implemented the MI Kids Now Executive Governance
11:22:40AM 10 Committee, which provides oversight of all decision making
11:22:43AM 11 related to contract action for congregate care facilities. We
11:22:47AM 12 also maintain our steadfast focus on ensuring the safety of all
11:22:52AM 13 youth receiving treatment in congregate care facilities through
11:22:54AM 14 intensive improvements in oversight of those facilities where
11:22:57AM 15 our children are placed, which Director Starling will address
11:23:01AM 16 further in this hearing.

11:23:05AM 17 Although we are experiencing the nationwide
11:23:06AM 18 phenomenon of increased demand for behavioral health services,
11:23:10AM 19 Michigan strives to lead the way in changing this in a number
11:23:13AM 20 of ways. For example, we have implemented a student loan
11:23:17AM 21 repayment program to help address work force challenges in the
11:23:22AM 22 behavioral health field that lead to limited ability to serve
11:23:26AM 23 children. So far the \$2 million of educational debt
11:23:30AM 24 forgiveness has been awarded to Michigan clinicians providing
11:23:33AM 25 mental health services in eligible nonprofit practice sites or

11:23:36AM 1 public school based systems, 74 percent of which are providers
11:23:41AM 2 in our community mental health service programs.

11:23:44AM 3 Additionally, Michigan recently implemented the first
11:23:48AM 4 cohort of grants to community mental health service providers
11:23:51AM 5 to implement innovative approaches to enhance intensive crisis
11:23:55AM 6 stabilization services for children and families, which
11:23:58AM 7 includes 24/7 availability of those services, statewide
11:24:02AM 8 coverage, access expectations and alignment to the State's
11:24:06AM 9 model with national best practice approaches.

11:24:10AM 10 Additionally, Michigan has expanded its intensive
11:24:12AM 11 community transition services benefit to assist with the
11:24:16AM 12 discharge process and to move children out of our Hawthorne
11:24:20AM 13 Center, which is Michigan's inpatient psychiatric hospital, and
11:24:24AM 14 into community-based settings.

11:24:26AM 15 These services are available to adults and children
11:24:29AM 16 who are ready to be discharged to a community based setting but
11:24:33AM 17 require more intensive care than those in a traditional
11:24:36AM 18 setting. These services recognize the acute needs of patients
11:24:40AM 19 and create a supportive structure to ensure successful
11:24:44AM 20 transition to a traditional community placement and are funded
11:24:47AM 21 100 percent by State dollars.

11:24:50AM 22 We continue to move forward toward the development of
11:24:54AM 23 psychiatric residential treatment facilities, Medicaid benefit
11:24:58AM 24 that will serve as a step-up or a step-down setting for
11:25:01AM 25 children. This facility -- these facilities will support a

11:25:05AM 1 transition process for children to reenter the community for
11:25:08AM 2 many inpatient, public or private setting that is funded
11:25:11AM 3 through the Medicaid program.

11:25:15AM 4 The current year budget also includes \$30.5 million
11:25:18AM 5 to support expanded access and capacity for behavioral health
11:25:22AM 6 services, and these funds support expansion of that intensive
11:25:26AM 7 community transition services for both adults and children.

11:25:30AM 8 The current year budget also includes \$41 million to
11:25:34AM 9 support the expansion of two units at our Hawthorne Center for
11:25:36AM 10 children recognizing the needs of children in private hospital
11:25:40AM 11 settings that require an inpatient level of care.

11:25:44AM 12 These are some of the ways that we continue to expand
11:25:46AM 13 services for children and families in Michigan, and as I have
11:25:49AM 14 mentioned earlier, you have my full commitment to improve
11:25:53AM 15 safety and outcomes for children and families in Michigan.

11:25:57AM 16 I am exceedingly proud of the work that we do and the
11:26:01AM 17 improvements that we are making as we continue to work toward
11:26:03AM 18 excellence in our child welfare system.

11:26:06AM 19 I will now turn it over to Kelly Sesti, who does
11:26:09AM 20 maintain the coordination of reporting for the MISEP and the
11:26:11AM 21 implementation of our CAP strategies for the Department in her
11:26:16AM 22 new role as bureau administration director for children's
11:26:20AM 23 services to go over some of these things in more detail.

11:26:23AM 24 Thank you, Your Honor.

11:26:25AM 25 **THE COURT:** Thank you, Director Hertel.

11:26:28AM 1 Ms. Sesti.

11:26:29AM 2 **DIRECTOR SESTI:** Thank you, Director Hertel, and good
11:26:34AM 3 morning, Your Honor. I appreciate the opportunity to outline
11:26:34AM 4 some of our progress and updates since the last hearing.

11:26:37AM 5 Cass, are you able to share our PowerPoint?

11:26:41AM 6 **MS. DRYSDALE-CROWN:** Yes, I am doing that now.

11:26:48AM 7 **DIRECTOR SESTI:** Okay. All right. Perfect. Thank
11:26:48AM 8 you, Cass. Now if we could start with the data slides.

11:26:53AM 9 So we wanted to begin with sharing some data with all
11:26:57AM 10 of you, so this graph shows the number of children under the
11:27:00AM 11 Department's supervision as well as the children in out-of-home
11:27:04AM 12 care. It also shows removals and exits from care for the past
11:27:10AM 13 year.

11:27:10AM 14 So as you can see, we've seen a steady decline in the
11:27:13AM 15 number of children under our supervision and in out-of-home
11:27:13AM 16 care. We currently have approximately 10,000 children under
11:27:19AM 17 our supervision, and just under 9,400 children in out-of-home
11:27:22AM 18 care. Our exits from care are outpacing our removals, which is
11:27:28AM 19 why we continue to see a decline in the number of children in
11:27:30AM 20 care. This can also be attributed to our prevention work as
11:27:34AM 21 well as our focus on permanency.

11:27:39AM 22 In the next slide, this graph shows the total number
11:27:43AM 23 of children from both our foster care and our juvenile justice
11:27:46AM 24 programs who are placed for treatment in a congregate care
11:27:51AM 25 setting. Specifically it covers the beginning of MISEP 21

11:27:54AM 1 through the end of December 2022. As you can see, we've
11:27:58AM 2 continued to see a steady decline. As of December, we had only
11:28:02AM 3 364 foster youth receiving treatment in congregate care
11:28:07AM 4 settings. The State continues to have a focus on keeping
11:28:09AM 5 children in their communities.

11:28:15AM 6 As I think we miss -- we have one more to update.
11:28:20AM 7 You want to go back one slide.

11:28:22AM 8 So this is an overlay of the last 12 months of data
11:28:25AM 9 for children in congregate care and out-of-home placements.
11:28:27AM 10 Both have continually shown a decrease. I think it's important
11:28:31AM 11 to note that about 3.9 percent of the foster care population in
11:28:35AM 12 Michigan is receiving treatment in a congregate care setting
11:28:39AM 13 compared to the national average of 9 percent, and we received
11:28:42AM 14 that information from Casey Family Programs. So Michigan is
11:28:48AM 15 well under the national average, and we continue to utilize
11:28:52AM 16 treatment in congregate care settings only when absolutely
11:28:55AM 17 necessary with a focus on strengthening our community
11:28:58AM 18 placements.

11:29:02AM 19 Next we'll move to permanency. In regards to
11:29:07AM 20 permanency, we continue our quality improvement effort called
11:29:10AM 21 ChildStat. We adopted this model because it is nationally
11:29:15AM 22 recognized and it has a continued focus on the achievement of
11:29:17AM 23 permanency in 12 months. We have added an emphasis on service
11:29:21AM 24 delivery related to permanency. Counties are identifying any
11:29:25AM 25 barriers, and we work as a team to find solutions. We also

11:29:28AM 1 identify best practices to share staff -- to share statewide,
11:29:32AM 2 excuse me, including staff retention strategies because we know
11:29:37AM 3 staffing changes negatively impact permanency. We're also
11:29:41AM 4 developing supports for relatives to support placements and our
11:29:45AM 5 counties have begun meeting regularly with their court partners
11:29:49AM 6 to discuss permanency data.

11:29:53AM 7 As an update to the information we provided at the
11:29:55AM 8 last hearing, the Department and the State Court Administrative
11:29:59AM 9 Office are working with the University of Michigan to finalize
11:30:02AM 10 the data visualization tool for jurists to utilize across the
11:30:07AM 11 State. The tool is a public-facing data dashboard to enable
11:30:11AM 12 the courts to have a centralized and accessible source of data
11:30:13AM 13 regarding children in foster care that are in their respective
11:30:16AM 14 counties.

11:30:17AM 15 U of M will have the tool developed by the end of
11:30:21AM 16 month. Trainings are being planned for February and March and
11:30:23AM 17 will include all legal partners statewide as well as
11:30:27AM 18 caseworkers, both public and private. The application is
11:30:31AM 19 interactive and will allow our legal partners to better track
11:30:34AM 20 data and measure outcomes related to permanency.

11:30:38AM 21 We've also implemented expedited permanency hearings
11:30:40AM 22 in Calhoun and Van Buren Counties. Both programs have seen
11:30:44AM 23 success in moving to permanency more quickly, and we look
11:30:48AM 24 forward to sharing those best practices and information with
11:30:50AM 25 other courts cross Michigan.

11:30:52AM 1 MDHHS is committed to improving well-being outcomes
11:31:00AM 2 for the children and families we serve. We've added two new
11:31:03AM 3 contracts to expand resources for domestic violence services.
11:31:06AM 4 We've also implemented an enhanced treatment foster care pilot
11:31:11AM 5 which provides supports to caregivers given an evidence-based
11:31:15AM 6 model to maintain placements that are at risk for disruption.

11:31:18AM 7 The caregiver support is aimed to stabilize the
11:31:21AM 8 placement and ensure the child receives services to meet their
11:31:24AM 9 immediate needs. The program responds to the family within 24
11:31:28AM 10 hours of referral.

11:31:34AM 11 And, lastly, I wanted to highlight a few of our
11:31:37AM 12 supports that we have put in place to promote placement
11:31:40AM 13 stability, especially for our kinship providers. I will just
11:31:44AM 14 highlight a few of them listed here.

11:31:47AM 15 So we've developed the Kinship Advisory Council,
11:31:50AM 16 which is tasked with advocating for the needs of kinship
11:31:53AM 17 families. The Council has quarterly meetings with two
11:31:56AM 18 subcommittees that meet monthly and focus on outreach and
11:32:00AM 19 engagement and services coordination and delivery.

11:32:04AM 20 We're also excited about our grow curriculum being
11:32:09AM 21 utilized for all new foster and adoptive parents and the
11:32:12AM 22 release of this computer-based training later this year.

11:32:16AM 23 As we mentioned at the last hearing, kinship parent
11:32:20AM 24 support workers have been hired throughout the State to provide
11:32:23AM 25 extra support for kinship caregivers, and we're especially

11:32:27AM 1 excited that we also received funding for these workers to have
11:32:30AM 2 access to funds to provides concrete supports for the families
11:32:34AM 3 that they're working with.

11:32:36AM 4 And, lastly, I'll mention in Wayne, Oakland and
11:32:39AM 5 Macomb we are implementing the Core Teen pilot, which is aimed
11:32:43AM 6 at providing specialized training to foster parents on caring
11:32:47AM 7 for teens with the goal of expanding foster homes for older
11:32:51AM 8 youth.

11:32:55AM 9 Thank you, Your Honor, for the opportunity to
11:32:57AM 10 present, and I'm happy to answer any questions regarding any of
11:33:01AM 11 the slides, either now or after Director Starling presents some
11:33:05AM 12 additional information regarding our efforts to improve safety.

11:33:10AM 13 **THE COURT:** Let's hear from Director Starling before
11:33:13AM 14 we start with questions.

11:33:14AM 15 **DIRECTOR SESTI:** Okay. Thank you.

11:33:17AM 16 **DIRECTOR STARLING:** And thank you, Kelly. Good
11:33:18AM 17 morning, Your Honor.

11:33:19AM 18 **THE COURT:** Good morning.

11:33:19AM 19 **DIRECTOR STARLING:** As you saw on Kelly's
11:33:21AM 20 presentation, MDHHS has implemented strategic efforts to
11:33:26AM 21 improve the safety children in our care, expand our resources
11:33:28AM 22 for our kin, and continues to decrease the number of children
11:33:32AM 23 in out-of-home care and those also in congregate care setting.
11:33:36AM 24 This is great work we believe, and we are very proud of our
11:33:39AM 25 progress thus far, but we know the safety of children placed in

11:33:43AM 1 our care continues to be our priority.

11:33:47AM 2 I believe the strategies being implemented through
11:33:50AM 3 the Court's approved Correctional Action Plan and our joint
11:33:54AM 4 review process with the monitors to review maltreatment in care
11:33:58AM 5 cases will continue to help us to achieve compliance with the
11:34:02AM 6 MISEP commitments.

11:34:04AM 7 As mentioned at the last hearing, the Department
11:34:06AM 8 created the Division of Child Safety and Program Compliance to
11:34:10AM 9 provide some of the increased contract oversight for our
11:34:14AM 10 congregate care facilities and our private foster care
11:34:17AM 11 agencies. Since our last status hearing, we have begun
11:34:21AM 12 implementing this new division and all contracted CCI and
11:34:25AM 13 foster care providers have been placed on an annual schedule
11:34:29AM 14 for contract evaluations.

11:34:32AM 15 The evaluations are data driven and maintain a
11:34:35AM 16 primary focus on child safety. This new division facilitates
11:34:41AM 17 monthly meetings with both private agency, foster care
11:34:44AM 18 providers, and our residential providers to ensure an ongoing
11:34:48AM 19 partnership that is focused on improved child safety through
11:34:52AM 20 data analysis and shared best practices.

11:34:57AM 21 Providers are active participants in all of these
11:34:59AM 22 meetings. This platform provides an opportunity for continuous
11:35:04AM 23 engagement and feedback between the Department and our private
11:35:08AM 24 agency partners specific to child safety and improved outcomes.

11:35:14AM 25 We also continue to work with the Building Bridges

11:35:20AM 1 Initiative to maintain a keen focus on child safety programming
11:35:21AM 2 around areas such as reduction and elimination of restraints
11:35:26AM 3 and trauma informed care.

11:35:28AM 4 Your Honor, we know we need to continue to make
11:35:31AM 5 system-wide improvements to ensure child safety by preventing
11:35:36AM 6 maltreatment in care incidents. Accordingly, we created a new
11:35:39AM 7 Maltreatment in Care Division within the Department. This new
11:35:44AM 8 division reports directly to myself. The goal is to improve
11:35:48AM 9 consistency in investigations, improve documentation, and
11:35:53AM 10 implement systemic changes to improve safety.

11:35:57AM 11 As I've mentioned, we have worked closely with the
11:36:01AM 12 monitors on the maltreatment in care case reviews and, as a
11:36:04AM 13 result, we have already begun to make improvements within our
11:36:07AM 14 systems. These improvements include, but are not limited to,
11:36:11AM 15 increased requirements for medical examinations on cases,
11:36:16AM 16 increased child interviews at congregate care facilities,
11:36:21AM 17 requirements to interview teachers, development of a gun
11:36:26AM 18 protocol to offer guidance to our investigators, improved
11:36:32AM 19 documentation on unsubstantiated investigations, exploration of
11:36:37AM 20 funding for requiring cameras in all of our congregate care
11:36:41AM 21 settings, and also, as Kelly has indicated previously, we've
11:36:45AM 22 also developed many programs to support kin providers, which
11:36:49AM 23 improves safety and care per the reports provided to us by the
11:36:53AM 24 University of Michigan through our evaluation of our MIC
11:36:58AM 25 trends.

11:36:58AM 1 We are especially excited about the development of
11:37:01AM 2 the kinship support specialists across the state, and we are
11:37:04AM 3 happy to continue to work with the monitors on refining our
11:37:07AM 4 practices and procedures. We will continue to review our
11:37:12AM 5 maltreatment in care cases collectively with the monitoring
11:37:15AM 6 team, and we are confident that we will see improvement in
11:37:18AM 7 these cases based off of these efforts.

11:37:20AM 8 Again, Your Honor, I appreciate the time here being
11:37:24AM 9 able to go over some of our enhancements and some of our
11:37:28AM 10 transformative changes and I will defer to the group if they
11:37:31AM 11 have any questions or things that they want us to touch more
11:37:34AM 12 upon. Thank you.

11:37:36AM 13 **THE COURT:** Thank you, Director Starling.

11:37:39AM 14 Ms. Bartosz, I'll hear from you, and then we can have
11:37:42AM 15 our question session when everybody's done making their
11:37:47AM 16 presentation.

11:37:49AM 17 **MS. BARTOSZ:** Thank you, Your Honor. Good morning.
11:37:52AM 18 Nice to be before the Court again.

11:37:56AM 19 Your Honor, there are two, if you will, sets of
11:37:58AM 20 performance data I think we're looking at this morning. One is
11:38:03AM 21 the validated performance reported by the monitors with respect
11:38:09AM 22 to MISEP period 21 and, secondly, is performance data with
11:38:16AM 23 respect to work by DHS in implementing the CAP that this Court
11:38:22AM 24 approved last April.

11:38:23AM 25 Your Honor, significantly, with respect to the MISEP

11:38:25AM 1 report 21, as Ms. Crummy pointed out, there are 24 areas in
11:38:32AM 2 which the State has still not achieved even coming within
11:38:37AM 3 10 percent of the performance goal agreed to by the parties in
11:38:41AM 4 entering into the settlement.

11:38:44AM 5 In short, in a number of areas, significant work
11:38:49AM 6 remains to be done. However, focusing really on the area of
11:38:56AM 7 safety to get an overall feel for where we're at, there's two
11:39:03AM 8 safety areas the monitors have reported with respect to in
11:39:07AM 9 MISEP 21 that are of grave concern, or great concern I'll say,
11:39:11AM 10 to plaintiffs here.

11:39:13AM 11 One is the issue of maltreatment in care, and, as
11:39:17AM 12 Ms. Crummy outlined for the Court, the monitors conducted a
11:39:20AM 13 review of 92 randomly selected cases from federal fiscal year
11:39:27AM 14 2021, and in that group determined that 37 percent of CPS
11:39:34AM 15 investigations with respect to maltreatment in care -- I should
11:39:37AM 16 say maltreatment in care investigations -- were deficient.

11:39:42AM 17 There should have been further investigation or the
11:39:45AM 18 agency should have actually substantiated an investigation that
11:39:50AM 19 are returned as unsubstantiated, and you've heard that DHS
11:39:54AM 20 itself, in reviewing these files with the monitors, have agreed
11:39:59AM 21 that 31 percent of that sample was, in fact, deficient.

11:40:04AM 22 That's incredibly concerning to the plaintiffs, Your
11:40:07AM 23 Honor, even this late into the implementation of the settlement
11:40:13AM 24 that literally one-third of cases going through maltreatment in
11:40:16AM 25 care investigations could, by the State's own admission, be

11:40:22AM 1 falling short of sound practice. So we think vital work
11:40:27AM 2 remains to be done in that area.

11:40:30AM 3 In the related area of contract oversight, DHS
11:40:34AM 4 assuring appropriate performance by its private providers, the
11:40:38AM 5 monitors have reported -- and I'll quote them -- that DHS's
11:40:43AM 6 contract evaluations, quote, "Continue to be inconsistent, at
11:40:47AM 7 times ineffective and in numerous instances did not ensure the
11:40:52AM 8 safety and well-being of the plaintiffs." We're, likewise,
11:40:57AM 9 very concerned by this finding this long into the
11:41:03AM 10 implementation and believe it's vital that continuing efforts
11:41:07AM 11 be made.

11:41:08AM 12 Finally, with respect to the MISEP 21 report, I would
11:41:14AM 13 highlight the ways that -- the distance that still needs to be
11:41:17AM 14 closed on the permanency within 12 months outcome. Children
11:41:21AM 15 were moved into the system, how quickly they can receive
11:41:27AM 16 placement, stable placements, once coming into foster care.
11:41:31AM 17 The performance there is quite short, and as Ms. Crummy pointed
11:41:35AM 18 out, the State literally needed to see 720 additional children
11:41:40AM 19 in placement in that 12-month period in order to meet the
11:41:44AM 20 performance goal in the settlement agreement, which happens to
11:41:48AM 21 be the federal child and families services review requirements
11:41:53AM 22 as well.

11:41:54AM 23 So there are big areas shown in MISEP 21 where work
11:41:59AM 24 must be done, but I will say on behalf of plaintiffs, there are
11:42:03AM 25 many areas of achievement as well, Judge, and we would be

11:42:07AM 1 absolutely remiss not to congratulate the State on the work
11:42:12AM 2 done in those areas and to applaud those efforts. That's the
11:42:16AM 3 reason we're here going through this very important process,
11:42:19AM 4 but, unfortunately, the accomplishments are accompanied by
11:42:24AM 5 areas where there continues to be rather substantial deficient
11:42:28AM 6 performance.

11:42:30AM 7 Your Honor, secondly, turning quickly to the area of
11:42:33AM 8 the CAP, plaintiffs are pleased to hear about the efforts being
11:42:41AM 9 made by DHS. We listened very carefully to the presentations
11:42:45AM 10 Your Honor just heard from Ms. Sesti and Mr. Starling, and we
11:42:49AM 11 have no doubt that management is making efforts and focused
11:42:54AM 12 efforts to get after the performance areas that are covered by
11:42:58AM 13 the CAP. We look forward to seeing validated data, Your Honor,
11:43:07AM 14 that would tell us how the CAP efforts translate into actual
11:43:13AM 15 performance on the performance metrics or outcomes defined in
11:43:18AM 16 the settlement agreement.

11:43:20AM 17 So while we're pleased to hear about the outcomes, we
11:43:24AM 18 want to see how that is actually making a difference. We hope
11:43:28AM 19 it's making a significant difference. We just haven't seen
11:43:32AM 20 data on that at this point.

11:43:33AM 21 So, Your Honor, in closing, I think we're at a place
11:43:37AM 22 in this settlement agreement implementation process where we
11:43:44AM 23 can all be pleased with progress that's been made in a variety
11:43:51AM 24 of areas, but I think it's time to still take a deep breath and
11:43:57AM 25 look at what remains to be done and come up with a focused

11:44:03AM 1 energized effort to take the settlement agreement across the
11:44:08AM 2 goal line, and that may still take some time, Your Honor.

11:44:11AM 3 Thank you.

11:44:14AM 4 **THE COURT:** Thank you, Ms. Bartosz.

11:44:16AM 5 I have to say, just as a preliminary matter, that I
11:44:20AM 6 am delighted with the progress that has been made since we
11:44:25AM 7 adopted the CAP last April. I think the State has taken huge
11:44:30AM 8 steps under Director Hertel and congratulations are in order
11:44:38AM 9 for sure.

11:44:40AM 10 But I don't disagree with Ms. Bartosz. There are
11:44:43AM 11 still a few areas that need to have additional work done. The
11:44:50AM 12 maltreatment in care, the contract oversight and the permanency
11:44:57AM 13 issue all need additional care attention, and I think we can
11:45:05AM 14 all see that finish line ahead of us. Whether it's two years
11:45:12AM 15 from now, two and a half years from now, it's hard for me to
11:45:16AM 16 say. I'm not good at predicting the future, but I know that
11:45:23AM 17 the monitors have a suggested plan for moving forward, and I
11:45:29AM 18 would be happy to hear from Mr. Ryan or Ms. Crummy about what
11:45:34AM 19 their suggestion are.

11:45:35AM 20 **MR. RYAN:** Sure, Your Honor. So Eileen and I would
11:45:40AM 21 recommend that after we file with you under seal the findings
11:45:46AM 22 from our more recent maltreatment in care investigation case
11:45:51AM 23 record review, which we're still discussing with the State --
11:45:55AM 24 we expect that will be March -- that we would confer with you,
11:46:00AM 25 Your Honor. And then with your guidance and support, we would

11:46:07AM 1 convene the parties and would mediate a discussion between the
11:46:14AM 2 parties to winnow this agreement so that it focuses squarely on
11:46:19AM 3 the areas that are more than 10 percent off of the performance
11:46:24AM 4 standard and acknowledges the enormous progress that has been
11:46:30AM 5 made in other areas.

11:46:31AM 6 And that progress will be evident to the public in
11:46:35AM 7 our report, and is evident to the parties and to the Court now,
11:46:38AM 8 because at the back of our monitoring report we have color
11:46:43AM 9 coded the State's historic progress since adoption of the MISEP
11:46:48AM 10 indicating areas where the State continues to meet or exceed
11:46:53AM 11 the performance standard, where the State has come close to
11:46:57AM 12 meeting the performance standard, and areas where the State has
11:47:00AM 13 not nearly done so.

11:47:02AM 14 And we hope that that color coding can encourage the
11:47:08AM 15 parties to focus on the red areas and have an agreement that
11:47:13AM 16 really squarely focuses on getting the rest of these areas,
11:47:18AM 17 particularly those that affect children's permanency and
11:47:22AM 18 safety, over the finish line.

11:47:24AM 19 Eileen, do you have anything to add to that?

11:47:29AM 20 **MS. CRUMMY:** No, Kevin. I think that's exactly where
11:47:30AM 21 we're at and would recommend to Judge Edmunds and just to
11:47:38AM 22 underscore that we agree that there has been tremendous
11:47:42AM 23 progress made in this case, and the State, you know, should
11:47:44AM 24 take all due credit for that.

11:47:46AM 25 But, you know, as we reflect in this most recent

11:47:48AM 1 report, there are areas that significantly impact child safety
11:47:53AM 2 and permanency that require focus and clarity and attention,
11:47:57AM 3 and we're happy to, with the Court's direction after we file
11:48:03AM 4 the March report, convene the parties if that's what the judge
11:48:07AM 5 would recommend.

11:48:12AM 6 **THE COURT:** Sounds good to me, and I'm happy to
11:48:14AM 7 participate to any extent that you want me to in a March
11:48:21AM 8 meeting that charts the way forward.

11:48:27AM 9 So anyone else have any thoughts about the
11:48:33AM 10 suggestion?

11:48:36AM 11 **MS. BARTOSZ:** Your Honor, this is Samantha Bartosz.
11:48:38AM 12 On behalf of the plaintiffs, we're, of course, most interested
11:48:42AM 13 in seeing the settlement agreement fully implemented and the
11:48:49AM 14 strategy that the monitors just outlined for the Court. Sounds
11:48:54AM 15 like it could be a meaningful and productive move in that
11:48:58AM 16 direction, so plaintiffs are willing to very much take part in
11:49:04AM 17 those discussions and hopefully to arrive at a way to really
11:49:10AM 18 target our goal toward getting some of these safety and other
11:49:15AM 19 outcomes across the goal line.

11:49:20AM 20 **MS. DRYSDALE-CROWN:** And, Your Honor, this is
11:49:20AM 21 Assistant Attorney General Cassandra Drysdale-Crown. Again I
11:49:26AM 22 want to thank the monitors, Samantha, Your Honor, for
11:49:29AM 23 continuing to work with the Department in its goals. Its
11:49:35AM 24 primary goal is children's safety, and it is committed to
11:49:38AM 25 working and maintaining excellence in providing safety to

11:49:44AM 1 children placed in its care.

11:49:47AM 2 We would be very excited to work with plaintiffs and

11:49:53AM 3 the monitors to narrow down the commitments to focus on

11:50:00AM 4 children's safety in some of the areas where the Department --

11:50:03AM 5 where the MISEP has shown that there's been some deficiency,

11:50:07AM 6 and I just wanted to stress for everyone again that MISEP 21

11:50:14AM 7 data was from 2021 and that the Department believes that Kevin

11:50:22AM 8 and Eileen, with the Court monitoring team, will be able to see

11:50:25AM 9 that tremendous progress has occurred since that time.

11:50:29AM 10 And, Samantha, I can appreciate your -- your

11:50:33AM 11 reluctance to click your heels to this right now, but hopefully

11:50:37AM 12 we'll see some demonstrable evidence and data and some tangible

11:50:43AM 13 anecdotal information that will come forth in that March

11:50:48AM 14 report.

11:50:48AM 15 So thank you very much, Your Honor, for your time and

11:50:51AM 16 we look forward to working with everyone to really narrow down

11:50:54AM 17 the focus and help us achieve the goals that this Court has set

11:51:02AM 18 before us.

11:51:04AM 19 **THE COURT:** Good. Anyone else?

11:51:10AM 20 All right. Thank you all for participating, for the

11:51:14AM 21 PowerPoint, for the report, especially for the monitors and all

11:51:19AM 22 the hard work that the State has done and from the oversight

11:51:24AM 23 that the plaintiffs continue to provide.

11:51:28AM 24 And once we get the March report, we can find a date

11:51:33AM 25 to meet with or without me. Thank you.

11:51:42AM 1 MS. BARTOSZ: Thank you, Your Honor.

11:51:43AM 2 MS. DRYSDALE-CROWN: Thank you, Your Honor.

11:51:44AM 3 THE CLERK: We're adjourned.

11:51:45AM 4 (At 11:51 a.m., court recessed.)

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12 C E R T I F I C A T E

13 I certify that the foregoing is a correct transcript
14 from the proceedings in the above-entitled matter.

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17 Date: 2-28-2023

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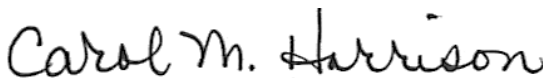
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